THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 7093 of 2006

Dated: 07.09.2006

Between:

M. Vinodh Kumar, S/o late M.S. Venkateswarlu, Unemployee, R/o 350, 7-3-280, Adlah Nagar, Gasmandi, Secunderabad.

.... PETITIONER

AND

The Second Appellate Authority, Under Section 48(3) of A.P. Shops and Estt. Act-cum-the Deputy Commissioner of Labour (Twin Cities) Hyderabad, Anjaiah Shramik Bhavan, RTC 'X' Road, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 7093 of 2006

Order:

This writ petition is filed seeking a Mandamus declaring the action of the 1st respondent in not releasing Rs.42,185/- deposited by the 2nd respondent towards last drawn wages up to January, 2006 as required under Section 48(4) of the A.P. Shops and Establishment Act, 1988 (for short 'the Act'), as illegal, arbitrary and violatiive of Section 48(4) of the Act and consequently to direct the 1st respondent to release the said amount to the petitioner and also to direct the 2nd respondent to pay the wages from February 2006 onwards.

The facts, in brief, are that the petitioner is working as Senior Operation Assistant in the 2nd respondent-Organization. Aggrieved by the order of dismissal from service, dated 23.10.2001, passed by the 2nd respondent, the petitioner-workman filed an appeal in S.E. No. 45 of 2001 under Section 48(1) of the Act before the Assistant Commissioner of Labour-III, Hyderabad, and the said first appellate authority, by order dated 30.01.2004, set aside the order of dismissal, and directed the 2nd respondent to reinstate the petitioner into service with all consequential benefits, including the back wages. Aggrieved by the said order, the 2nd respondent preferred an appeal in Second Appeal No. 16 of 2004 and as required under Section 48(4) of the Act, he deposited an amount of Rs.42,185/- towards last drawn wages before preferring the second appeal. Though the 1st respondent entertained the second appeal filed

by the 2nd respondent, no interim order of stay of the order passed by the first appellate authority was granted. Subsequently, the petitioner-workman filed a petition in the Second Appeal No. 16 of 2004 on 16.02.2006 seeking withdrawal of the amount deposited by the 2nd respondent. But, so far no orders thereon have been passed by the 1st respondent. Hence, he filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent.

Admittedly, there is no stay of the operation of the order of the first appellate authority, passed by the second appellate authority, and in the absence of any stay of the order of the first appellate authority, the action of the second appellate authority in not permitting the petitioner-workman to withdraw the amounts deposited by the 2nd respondent on the ground that the appeal is pending, cannot be countenanced.

The learned counsel appearing on behalf of the 2nd respondent submitted that as the 2nd respondent raised an objection regarding the jurisdiction of the first appellate authority, the petitioner should not be permitted to withdraw the amount deposited by the 2nd respondent. I am unable to accept such a contention. Unless and until the 1st respondent, namely the second appellate authority, grants stay of the operation of the order passed by the first appellate authority, he cannot restrain the petitioner to withdraw the amount deposited by the 2nd respondent.

In the circumstances, I deem it appropriate to dispose of the writ petition with the following direction.

The 1st respondent is directed to consider the application filed by the petitioner-workman, seeking to withdraw the amount of Rs.42,185/- deposited by the 2nd respondent, and pass appropriate orders thereon in accordance with law, within a period of four weeks from today. No costs.

N.V. RAMANA, J.

Date: 07.09.2006
Note:
Issue CC by Monday.
(B/O)
Nsr/Ksr